

SENSITIVE

FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2015 NOV -2 PM 3:21

2015 NOV -2 PM 3:02

In the Matter of

MUR 6931

Laffen 4 Senate

Senator Lonnie Laffen (ND State Senate)

Leo Ledohowski

Governor Jack Dalrymple (North Dakota)

Dalrymple for Governor (a.k.a. Friends of

Jack Dalrymple)¹

John Pfeffer

ND Oil PAC

Dean Potter

MUR 6933

Laffen 4 Senate

Senator Lonnie Laffen (ND State Senate)

Leo Ledohowski

DISMISSAL AND
CASE CLOSURE
UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

CELA

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances,

¹ The Office of General Counsel notified Dalrymple for Governor as a Respondent; however, according to the North Dakota Secretary of State website, it appears that the committee's current name is now "Friends of Jack Dalrymple."

1 or in certain cases where the responses sufficiently rebut the allegations set forth in the
2 complaint, to make a no reason to believe finding.²

3 For the reasons set forth below, the Office of General Counsel recommends that the
4 Commission find no reason to believe that a contribution made by John Pfeffer, and accepted by
5 Governor Dalrymple and Dalrymple for Governor, violated 52 U.S.C. § 30121(a). We further
6 recommend that the Commission use its prosecutorial discretion and dismiss the allegations that
7 contributions made by Leo Ledohowski and accepted by Senator Lonnie Laffen, Laffen 4
8 Senate, Governor Jack Dalrymple and Dalrymple for Governor violated 52 U.S.C. § 30121(a),
9 and that it dismiss the allegation that a contribution made by Dean Potter and accepted by ND
10 Oil PAC violated 52 U.S.C. § 30121(a).

11 **I. FACTS**

12 Based on information obtained from the North Dakota Secretary of State's website, the
13 complaints in MUR 6931 and MUR 6933 allege violations of the Act's ban on contributions by
14 foreign nationals. First, both complaints allege that Laffen 4 Senate, North Dakota State Senator
15 Lonnie Laffen's state campaign committee, accepted contributions from foreign nationals. They
16 point to contributions made to Senator Laffen's campaign by Leo Ledohowski, who disclosed a
17 Canadian mailing address, and according to one complainant, "is a successful Canadian business

² MUR 6931 and MUR 6933 raise similar claims against some of the same respondents. Accordingly, the Office of General Counsel has elected to address the two matters concurrently.

The EPS rating information for MUR 6931 is as follows:
Last Response Filed: May 5, 2015.

Complaint Filed: April 10, 2015.

The EPS rating information for MUR 6933 is as follows:
Last Response Filed: April 29, 2015.

Complaint Filed: April 15, 2015.

1 person.” The contributions at issue were a \$1,000 contribution made on September 12, 2010.
2 and a \$1,945.42 contribution made on October 25, 2014.³

3 The complaint in MUR 6931 further alleges that Governor Jack Dalrymple of North
4 Dakota also accepted contributions from foreign nationals: a \$2,500 contribution made by
5 Ledohowski on July 11, 2012, and a \$1,000 contribution from John Pfeffer on October 15, 2012,
6 who had a London mailing address. The same complaint also alleges that ND Oil PAC reported
7 a \$500 contribution on May 7, 2014, from Dean Potter, an individual with a Canadian mailing
8 address.

9 The complaint in MUR 6931 cites a press report stating that Senator Laffen claimed to
10 have checked with the North Dakota Secretary of State on the propriety of “accepting donations
11 from any country” and was told that it was permissible. In his responses, Senator Laffen
12 explains that he checked with the North Dakota Secretary of State regarding the contribution
13 from Ledohowski, who is a friend of his, and “was told that the contribution would be allowed –
14 that no state law prevented it.”⁴ Laffen states that he was not aware that federal law applied.⁵
15 Furthermore, Laffen notes that both of Ledohowski’s contributions were refunded on April 20,
16 2015.⁶ Ledohowski acknowledges that he was contacted about making campaign contributions,
17 so he inquired whether it was permissible for him as a Canadian citizen to make such

³ Both complaints identify the October 2014 contribution but the complaint in MUR 6931 adds the September 2010 contribution.

⁴ Laffen Resp. (Apr. 25, 2015) (MURs 6931 and 6933).

⁵ *Id.*

⁶ *Id.*

1 contributions and was advised that the contributions were allowed.⁷ His response confirms that
2 the contributions were refunded.⁸

3 Governor Dalrymple's response asks that no action be taken because his acceptance of
4 Ledohowski's contribution was "an inadvertent violation resulting from the campaign's reliance
5 on state law."⁹ His campaign refunded Ledohowski's contribution on April 22, 2015.

6 With regard to the alleged foreign contribution from Pfeffer, Dalrymple states that his
7 campaign believed that Pfeffer was a citizen of the United States. The response included a copy
8 of Pfeffer's original contribution check, which shows a Tennessee address.¹⁰ Dalrymple states
9 that the London address listed on the committee's disclosure report was an updated address from
10 an address service.¹¹ Pfeffer's response to the complaint states that he is a U.S. citizen and
11 provides a copy of his U.S. passport indicating the same.¹²

12 The ND Oil PAC and contributor Dean Potter also submitted responses. ND Oil PAC
13 states that it understood that because the committee was a state PAC, and based on guidance
14 provided by the North Dakota Secretary of State, "that the contribution was not in violation" of
15 the law.¹³ Nevertheless, the PAC refunded the \$500 contribution it had received from Potter and
16 submitted proof of that refund in an attachment to its response.¹⁴ Potter's response confirms that

⁷ Ledohowski Resp. (Apr. 28, 2015).

⁸ *Id.*

⁹ Dalrymple Resp. (Apr. 22, 2015).

¹⁰ *Id.*, Attach. I.

¹¹ *Id.* at 1.

¹² Pfeffer Resp. (April 24, 2015).

¹³ ND Oil PAC Resp. (Apr. 24, 2015). On its website, ND Oil PAC states that its purpose is, in part, to "[c]ollect funds to support candidates and issues within the state." See <http://www.ndoil.org/members/oil-pac/>.

¹⁴ ND Oil PAC Resp., Attach. (showing that the refund was sent on April 22, 2015).

1 he is a Canadian citizen.¹⁵ He explains that the contribution came about in connection with his
2 attendance at a petroleum conference in North Dakota and that he did not intend to violate any
3 Federal laws or regulations.¹⁶ The contribution was apparently related to an “evening social
4 event” hosted by the ND Oil PAC during the 2014 Williston Basin Petroleum Conference.¹⁷

5 II. LEGAL ANALYSIS

6 Under the Act, it is unlawful for a foreign national, directly or indirectly, to make a
7 contribution or donation of money or other thing of value “in connection with a Federal, State, or
8 local election.”¹⁸ In addition, no person may solicit, accept, or receive a foreign national
9 contribution or donation.¹⁹ A “foreign national” is an individual who is not a citizen of the
10 United States or a national of the United States and who is not lawfully admitted for permanent
11 residence.²⁰ If a committee treasurer, based on new evidence not available to the political
12 committee at the time of receipt and deposit, discovers that an illegal contribution, such as one
13 from a foreign national, was accepted, the treasurer shall refund the contribution to the
14 contributor within thirty days of the date on which the illegality is discovered.²¹

¹⁵ Potter Resp. at 1 (Apr. 29, 2015).

¹⁶ *Id.* at 1, 3-4. Potter also provided a copy of the check that ND Oil PAC sent to him refunding the contribution. *Id.*, Attach.

¹⁷ The letter accompanying the refund check also referenced the PAC’s “May 2014 social.” *Id.* at 3, Attach. The conference itself was held by the North Dakota Petroleum Council, but Potter’s contribution was made to the PAC. See <http://www.ndoil.org/events/wbpc/>.

¹⁸ 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

¹⁹ 52 U.S.C. § 30121(a)(2). The Commission’s regulations employ a “knowingly” standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. *Id.* § 110.20(a)(4).

²⁰ 52 U.S.C. § 30121(b)(2); 11 C.F.R. § 110.20(a)(3)(ii).

²¹ 11 C.F.R. § 103.3(b)(2).

1 It appears that the contributions made by Ledohowski, and their acceptance by Senator
2 Laffen and Governor Dalrymple's campaigns, violated the prohibition on contributions by
3 foreign nationals under the Act and Commission regulations. Senator Laffen and Governor
4 Dalrymple both indicate that they relied on guidance provided by a state government office that
5 was ultimately incorrect. Ledohowski also indicates that he received advice that the
6 contributions were permissible but did not specify from whom. Moreover, the committees
7 promptly refunded the impermissible contributions from Ledohowski, totaling \$5,445.42, in
8 April 2015, shortly after being notified of the complaints in this matter. Similarly, ND Oil PAC
9 claims to have relied on guidance from the North Dakota Secretary of State and Potter's \$500
10 contribution was promptly refunded as well.²²

11 Based on the available information, it appears that the violations may have been
12 inadvertent in nature. In light of the fact that the illegal contributions were refunded within the
13 thirty-day time period required by Commission regulations, further enforcement resources are
14 not warranted in this matter. Therefore, the Office of General Counsel recommends that the
15 Commission exercise its prosecutorial discretion to dismiss the allegations that Leo Ledohowski,
16 Senator Lonnie Laffen, Laffen 4 Senate, Governor Jack Dalrymple, and Dalrymple for Governor
17 violated 52 U.S.C. § 30121(a) in connection with Ledohowski's contributions, and dismiss the
18 allegations that Dean Potter and ND Oil PAC violated 52 U.S.C. § 30121(a).²³

19 In light of the evidence Pfeffer provided to demonstrate that he is a United States citizen,
20 his contribution to Governor Dalrymple's campaign committee did not violate the Act's foreign

²² Respondents were notified of the complaints in both matters on April 17, 2015. Senator Laffen's campaign refunded Ledohowski's contributions on April 20, 2015, and Governor Dalrymple's campaign refunded Ledohowski's contribution on April 22, 2015.

²³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 national contribution prohibition. Therefore, we recommend that the Commission find no reason
2 to believe that Pfeffer, Governor Jack Dalrymple, and Dalrymple for Governor violated 52
3 U.S.C. § 30121(a).

4 Finally, the Office of General Counsel recommends that the Commission approve the
5 attached Factual and Legal Analyses and close the file.

6 **III. RECOMMENDATIONS**


- 7 1. Find no reason to believe that John Pfeffer violated 52 U.S.C. § 30121(a).
8
9 2. Find no reason to believe that Governor Jack Dalrymple and Dalrymple for Governor
10 (a.k.a. Friends of Jack Dalrymple) violated 52 U.S.C. § 30121(a) in connection with a
11 contribution by John Pfeffer.
12
13 3. Dismiss the allegations that contributions made by Leo Ledohowski and accepted by
14 Senator Lonnie Laffin, Laffin 4 Senate, Governor Jack Dalrymple, and Dalrymple for
15 Governor (a.k.a. Friends of Jack Dalrymple) violated 52 U.S.C. § 30121(a).
16
17 4. Dismiss the allegations that a contribution made by Dean Potter and accepted by ND Oil
18 PAC violated 52 U.S.C. § 30121(a).
19
20 5. Approve the attached Factual and Legal Analyses.
21
22 6. Approve the appropriate letters.
23

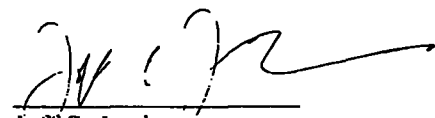
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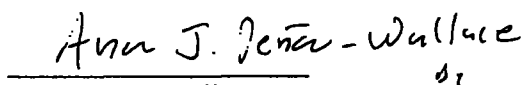
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